

This Opinion is Not a
Precedent of the TTAB

Mailed: March 2, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Darren D. Foster
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Serial No. 88111432
—

Francis John Ciaramella of Francis John Ciaramella PLLC,
for Darren D. Foster, Applicant.

Patty Evanko, Trademark Examining Attorney, Law Office 119,
Brett Golden, Managing Attorney.

—
Before Lykos, Goodman, and Dunn,
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Darren D. Foster (“Applicant”) seeks registration on the Supplemental Register of the mark TRAP MUSIC AWARDS (in standard characters) for “entertainment services, namely, providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of trap music,” in International Class 41.¹

¹ Application Serial No. 88111432 filed September 10, 2018 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as September 10, 2018.

The Trademark Examining Attorney refused registration under Sections 23 and 45 of the Trademark Act, 15 U.S.C. § 1091 and 1127, on the ground that Applicant's proposed mark is generic and, as such, incapable of distinguishing Applicant's services.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

I. Genericness

A generic term "is the common descriptive name of a class of goods or services." *Royal Crown Cola v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) quoting *H. Marvin Ginn Corp. v. Int'l Assoc. of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). Generic terms are "by definition incapable of indicating source," and so "are the antithesis of trademarks, and can never attain trademark status." *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987). "To allow trademark protection for generic terms, i.e., names which describe the genus of goods being sold, even when these have become identified with a first user, would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are." *Id.* (citation omitted).

The Trademark Status and Document Retrieval (TSDR) citations refer to the downloadable .pdf version of the documents available from the electronic file database for the involved application. The TTABVue citations refer to the Board's electronic docket, with the first number referring to the docket entry and the second, if applicable, the page within the entry.

“Determining whether a mark is generic ... involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?” *H. Marvin Ginn Corp.*, 228 USPQ at 530; *In re Virtual Independent Paralegals, LLC*, 2019 USPQ2d 111512, *2 (TTAB 2019).

A. Genus of Services

Because the identification of goods or services in an application defines the scope of rights that will be accorded the owner of any resulting registration under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), as a rule “a proper genericness inquiry focuses on the description of services set forth in the [application or] certificate of registration.” *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991). *See In re Nordic Naturals, Inc.*, 755 F.3d 1340, 111 USPQ2d 1495, 1496 (Fed. Cir. 2014) (“The Board found that the relevant goods were adequately defined by Nordic’s description: ‘nutritional supplements containing DHA.’”). In this case, we find, with the Examining Attorney, that the relevant genus of services is commensurate with the recitation of services, i.e., “entertainment services, namely, providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of trap music.”²

² Pointing out that Applicant himself uses the terms found in his mark to describe his services is appropriate in a genericness inquiry. *Compare In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) (“Gould’s own submissions provided the most damaging evidence that its alleged mark is generic and would be perceived by the purchasing public as merely a common name for its goods rather than a mark identifying the good’s source.”). We

B. Relevant Public's Understanding of the Term TRAP MUSIC AWARDS

We address whether the designation TRAP MUSIC AWARDS is understood by the relevant public primarily to refer to the genus of services, “entertainment services, namely, providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of trap music.” The relevant public for a genericness determination refers to the purchasing or consuming public for the identified goods or services. *Magic Wand Inc. v. RDB Inc.*, 19 USPQ2d at 1553; *In re James Haden, MD, PA*, 2019 USPQ2d 467424, *2 (TTAB 2019). Here, the relevant public consists of the general public who listen to trap music and those who are associated with the trap music industry.

Evidence of the relevant public's understanding of the designation may be obtained from any competent source. *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016). Competent sources may include purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications. *In re Merrill Lynch, Fenner, and Smith*, 4 USPQ2d at 1143; *In re Virtual Independent Paralegals, LLC*, 2019 USPQ2d at *2 (TTAB 2019). Applicant's own specimens and promotional materials are competent sources to show genericness. *See In re Gould Paper Corp.*, 5 USPQ2d at 1112; *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1958 (TTAB 2018).

disagree with Applicant's contention that by underlining the terms “awards” and “in the field of trap music” in the recitation of services when discussing the refusal, the Examining Attorney restricted the genus and “in effect ignored the remaining entirety of Applicant's identification of goods.” 7 TTABVUE 5. In each Office Action the Examining Attorney reiterates that the recitation of services defines the genus of the services at issue.

The record defines “trap music,” as “a popular subgenre of hip-hop known for its harsh sound and grim lyrics.”³ The record also includes excerpts from online sources to show use of the term TRAP MUSIC to name a type of music, and to demonstrate how the relevant public encounters the term TRAP MUSIC:

Trap music

For the trap music derived from dubstep and elements of electronic dance music, see Trap Music (EDM).

Trap is a style of Southern hip hop that was developed the late 1990s to early 2000s in the Southern United States. It is typified by double or triple-time subdivided hi-hats, heavy, sub-bass layered kick drums from the Roland TR-808 drum machine, layered synthesizers and an overall dark, ominous or bleak atmosphere and lyrical content. The term “trap” referred to places where drug deals take place. In the 2010s, artists crossbred trap with dubstep to create trap EDM.

https://wikipedia.org/wiki/trap_music⁴

What is Trap Music and Where Did it Come From?

The Music Origins Project

Trap music is a music genre that originated in the early 1990s in the Southern United States. It is typified by its aggressive lyrical content and sound, where the instrumentals are propelled by 808 kickdrums or heavy extended sub-bass lines, double-time, triple-time and other faster time division hi-hats, layered synthesizers, and “cinematic” strings.

<https://www.musicorigins.org/item/trap-music/>⁵

A Quick Guide to Trap Music

How and when did trap music become popular?

Arguably the most popular subgenre of rap music, trap has been redefined and re-created time and time again. While Atlanta rappers like T.I. and Gucci Mane certainly popularized the genre, trap first made its way into the hip-hop scene long before those two ever spit a verse. The rap style is popularly known

³ June 18, 2019 Response TSDR 5, citing Dictionary.com, <https://e/pop-culture/trap-music/>.

⁴ December 20, 2018 Office Action TSDR 8. Because there are inherent limitations to information derived from the collaborative Internet resource, the Board will permit evidence from Wikipedia to be made of record when timely introduced so the non-offering party has an opportunity to submit rebuttal evidence, a condition which was met in this case. *See In re Jimmy Moore LLC*, 119 USPQ2d 1764, 1768 (TTAB 2016); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 710.01(b) (October 2018).

⁵ January 21, 2020 Office Action TSDR 9.

for its grim lyrics and gritty vocals. Common themes include the hardships and struggles associated with poverty, drugs, gang violence and sex.
<https://www.one37pm.com/culture/music/trap-music-artists-history-impact-evolution>⁶

What is Trap Music? Trap Music Explained

Trap music is a genre that is starting to gain quite a bit of momentum through the ever growing sub-genres of dance music culture. Although this new found hype towards trap music, or EDM Trap Music as some may call it, has recently emerged, there is a history behind the origin of the Trap genre that is all but new.

Trap music first emerged coming primarily from the south, a genre filled with a hard attitude that you can feel in the sound of the brass. Triangle, triple hi hats, loud kicks, snappy snares and low end 808 bass samples that are used when composing tracks. The percussion samples of choice when making trap music usually originate from the Roland TR-808 Drum Machine. When speaking of the "originators" in the trap music game, southern rappers like Waka Flocka Flame, Gucci Mane, Young Jeezy, Three 6 Mafia, and Manny Fresh come to mind. As well as some of the iconic trap music producers like Lex Luger, Zaytoven, and up and comer Young Chop.

Run The Trap, <https://runthetrap.com/what-is-trap-music/>⁷

Trap Music is based on use of the 808 Roland Drum machine, pitched and re-sampled hip-hop/rap vocals, pipe flutes, gangsta synth leads, and various FX. Similar to rap without the main vocal, Trap music has been gaining lots of attention from major DJs and labels. Although the style originated many years ago, Trap music has recently been making a new school comeback in many new forms such as "Trap," "Chirp," "SeaPunk," PsyTrap," and "TrapStep." Earliest known examples can be found by artists such as Triple Six Mafia, UGK, Swisha House, and Gucci Mane.

<https://www.urbandictionary.com/define.php?terms=Trap%20Music>⁸

The definition of "trap music" as a type of music is undisputed. Applicant does not contend that "trap music" has any meaning except as a type of music; and Applicant's recitation of services uses the phrase "trap music." *See In re Johanna Farms, Inc.*,

⁶ January 21, 2020 Office Action TSDR 12.

⁷ June 18, 2019 Response TSDR 7.

⁸ August 1, 2020 Office Action TSDR 35.

222 USPQ 607, 609 (TTAB 1984) (“The term ‘yogurt’ is concededly the name of the goods. That fact is uncontrovertible where, as here, the same term has been used in the identification of goods for which registration is sought.”). Based on this record evidence, we find the term “trap music” is generic for, and commonly understood by the relevant public to refer to, a type of music.

Turning to the term “music awards,” although not used as a unitary phrase in Applicant’s recitation of services, the recitation describes the services as including “awards... in the field of ... music.” In addition, the record includes excerpts from online sources to show use of the term MUSIC AWARDS to name a type of entertainment featuring awards for music, and to demonstrate how the relevant public encounters the term MUSIC AWARDS:

Everything We Know about the 2020 Billboard Music Awards

...

The awards recognize artists whose music has performed especially well on the charts that year. ... On April 29, tune in to the Billboard Music Awards for all of your pop music favorites, gathered in one place.

<https://www.oprahmag/entertainment/a31214182/billboard-music-awards-date-nominees-performers/>⁹

IBMA Bluegrass Music Awards

Recognizing outstanding achievement and pioneering effort in bluegrass music.

...

Click below to view the official IBMA press releases listing the 2019 IBMA Bluegrass Music Award winners, Industry Awards winners, and Momentum Awards winners.

<https://ibma.org/international-bluegrass-music-awards/>¹⁰

⁹ August 1, 2020 Office Action TSDR 31.

¹⁰ August 1, 2020 Office Action TSDR 33.

In addition to the websites with information regarding individual music awards, the record includes websites aggregating the information regarding entertainment in the form of music awards (**emphasis** added):

Music Award

A **music award** is an award or prize given for skill or distinction in music. There are different awards in different countries and different awards may focus on or exclude certain music. For example, some **music awards** are only for classical music and include no popular music. Some **music awards** are academic, some are commercial and created by the music industry. The Big Three major **music awards** given each season are the American Music Awards (held in the Fall), the Grammy Awards (generally held the week after the NFL's Super Bowl), and the Billboard Music Awards (held in the Summer). A fourth major award, the Rock and Roll Hall of Fame Induction Ceremony, is given in the spring (between the Grammys and the BMAs), and currently honors artists who have been in the business at least 25 years since their first hit record. Among other mini-major **music awards** are the Glenn Gould Prize, and Pulitzer Prize for Music.

List of **music awards**

Academy of Country **Music Awards**

Akil Koci Prize

Alternative Press **Music Awards**

American Academy of Arts and Letters Gold Medal in Music

American Country Awards

ASCAP awards (American Society of Composers, Authors and Publishers)

American **Music Award**

Anugerah Musik Indonesia

Anugerah Planet Muzik

ARIA **Music Awards** (Australian Recording Industry Association)

Awit Awards (Philippine Association of the Record Industry)

APRA Awards (Australia)

Asia Artist Awards (South Korea)

BBC **Music Awards** (BBC Music)

Billboard Awards

BAFTA Anthony Asquith Award (British Academy of Film and Television Arts)

British Composer Awards (British Academy of Songwriters, Composers and Authors)

BET Awards (Black Entertainment Television, United States)

BreakTudo Awards

Brit Awards (British Phonographic Industry)

Comet (Viva, Germany)
Classic Rock Roll of Honour Awards - an annual awards program bestowed
by *Classic Rock*
CMT Music Awards
Country Music Association Awards
Country **Music Awards** of Australia (Country Music Association of
Australia)
Distinguished Service to Music Medal (Kappa Kappa Psi) - for exceptional
service to American bands and band music
Echo (German Phonographic Academy)
European Border Breakers Award (Europe)
Ernst von Siemens Music Prize
Fryderyk (Poland)
Fonogram Awards (Hungary)
Gaon Chart **Music Awards** (South Korea)
George Peabody Medal (Peabody Institute)
Gold Badge Awards - for outstanding contributions to the music and the
entertainment industry of the United Kingdom
Golden Disc Awards (South Korea)
Golden Globes (Portugal)
Golden Melody Awards (Taiwan)
Grammy Awards (National Academy of Recording Arts and Sciences)
Grand Prix du Disque (France)
Grawemeyer Award of Music Composition
Handel Music Prize (City of Halle, Germany)
Heat Latin **Music Awards**
iHeartRadio **Music Awards**
iHeartRadio MMVAs (originally an initialism of Much Music Video Awards)
Ivor Novello Awards (British Academy of Songwriters, Composers and
Authors)
Indonesian Choice Awards
Indonesian Dangdut Awards
International Dance **Music Awards**
Juno Awards (Canadian Academy of Recording Arts and Sciences)
Herbert von Karajan Music Prize (Festspielhaus Baden-Baden)
Korean Hip-hop Awards (South Korea)
Korean **Music Awards** (South Korea)
Korean Popular Culture and Arts Awards (South Korea)
Latin American **Music Award**
Latin Grammy Award (Latin Academy of Recording Arts & Sciences)
Leonie Sonning Music Prize (Leonie Sonning Music Foundation)
Lo Nuestro Awards (USA)
Los Premios MTV Latinoamerica - previously known as MTV Video Music
Awards Latinoamerica (MTV)

LOS40 **Music Awards** (Spain)
MBC Plus X Genie **Music Awards** (South Korea)
Melon **Music Awards** (South Korea)
Mirchi **Music Awards** (India)
Mnet Asian **Music Awards** (South Korea)
MTV Africa **Music Awards** (MTV)
MOBO Awards
MTV Asia Awards (MTV)
MTV Australia Awards (MTV)
MTV Europe **Music Awards** (MTV)
MTV Video **Music Awards** (MTV)
NAACP Image Awards
NRJ **Music Award**
NME Awards
Otaka Prize - an annual composition prize for Japanese composers
People's Choice Awards
PLAY - Portuguese **Music Awards** (Portugal)
Polar Music Prize- for international recognition of excellence in the world of music
Praemium Imperiale
Preis der deutschen Schallplattenkritik – for achievement in recorded music
Premios Juventud
Prix de Rome
Pulitzer Prize for Music
Rock and Roll Hall of Fame Induction Ceremony
Rolf Schock Prize in Musical Arts
Sanremo Music Festival (Italy)
Seoul **Music Awards** (South Korea)
Stellar Awards (Gospel)
Sibelius Prize
Silver Clef Award (UK)
Soribada Best **K-Music Awards** (South Korea)
Soul Train **Music Award**
Star FM **Music Awards** (Zimbabwe)
Suntory **Music Award** (Japan)
Teen Choice Awards
Telehit Awards (Mexico)
TheHeadies (Nigeria)
Youtube **Music Awards**
https://en.wikipedia.org/wiki/music_award¹¹

¹¹ July 9, 2019 Office Action TSDR 17.

MUSIC AWARDS SITES

Music awards sites that celebrate the latest and greatest talents of the various music scenes.

(list of music awards sites omitted as largely duplicative of Wikipedia listing)

<https://www.musicoutfitters.com/musicawards.htm>¹²

LIST OF MUSIC AWARDS SHOWS

Here is a list of 2018 **Music Awards** Dates. We have put together a list of a few of the more popular **music awards** shows. A few have passed but there are still several ceremonies for 2018. Here is the list for the 2018 **Music Award Shows**.

(list of music awards shows omitted as largely duplicative of Wikipedia listing)

<https://camphouseconcerts.com/2017/listof-2018-music-award-shows/>¹³

The record includes third-party registrations for marks including the term MUSIC AWARDS (NEW YORK MUSIC AWARDS, DETROIT MUSIC AWARDS, TEJANO MUSIC AWARDS, INDIE MUSIC AWARDS, BIG APPLE MUSIC AWARDS, PERSIAN MUSIC AWARDS, TEMECULA VALLEY MUSIC AWARDS) for similar entertainment services via music awards which issued on the Supplemental Register or pursuant to a claim of acquired distinctiveness with a disclaimer of the term MUSIC AWARDS.¹⁴ These registrations indicate that the Office treats the term MUSIC AWARDS as generic in relation to entertainment services.

The un rebutted evidence demonstrates that “music awards” are a type of entertainment providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of music. Applicant does not contend that “music awards” has any meaning except as a

¹² August 1, 2020 Office Action TSDR 32.

¹³ August 1, 2020 Office Action TSDR 30.

¹⁴ August 1, 2020 Office Action TSDR 5-23.

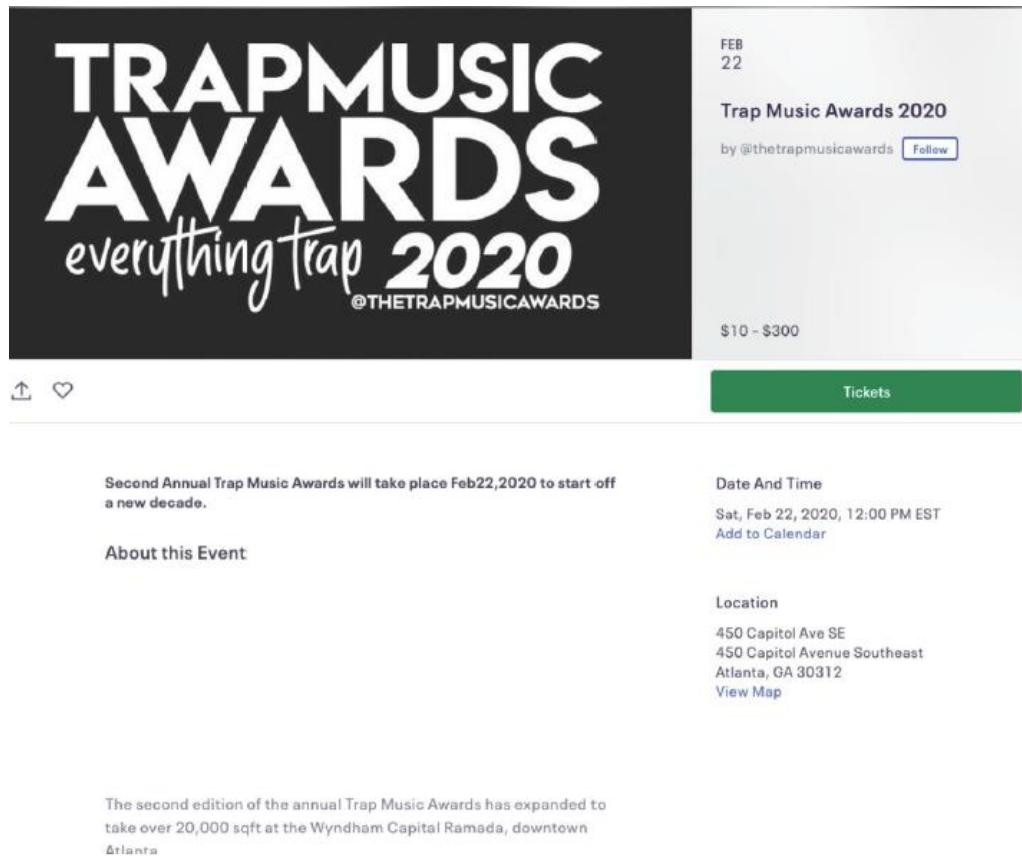
type of entertainment providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of music; and Applicant's recitation of services uses the phrase "awards to artists, producers, writers and music video directors to demonstrate excellence in the field of trap music." Based on this record evidence, we find the term "music awards" is generic for, and commonly understood by the relevant public to refer to, a type of entertainment providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of music.

In sum, we find that "TRAP MUSIC" is the generic term for a type of music, and "MUSIC AWARDS" is the generic term for entertainment services providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of music. We reiterate that the evidence and the findings that TRAP MUSIC and MUSIC AWARDS are generic are undisputed. Applicant does not contend that the relevant public would perceive any alternate meaning to either the term "TRAP MUSIC" or the term "MUSIC AWARDS," reserving its arguments as to the registrability of the combined term TRAP MUSIC AWARDS. We turn then to consideration of the mark as a whole.

When a term consists of a compound word or a telescoped word, the examining attorney may establish that the term is generic by producing evidence that each of the constituent words is itself generic, and that the separate words retain their generic significance when joined to form the compound or telescoped word that has

“a meaning identical to the meaning common usage would ascribe to those words as a compound.” *In re Wm. B. Coleman Co., Inc.*, 93 USPQ2d 2019 (TTAB 2010) (ELECTRIC CANDLE COMPANY is the combination of two generic terms joined to create a compound). Here, we find the combination of the generic terms TRAP MUSIC and MUSIC AWARDS does no more than form the new generic term TRAP MUSIC AWARDS, which the general public who listen to trap music, and those who are associated with the trap music industry, will understand to refer to “entertainment services, namely, providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of trap music.” See *In re Virtual Independent Paralegals, LLC*, 2019 USPQ2d at *8 (“Combining VIRTUAL PARALEGAL and INDEPENDENT PARALEGAL into VIRTUAL INDEPENDENT PARALEGALS provides no additional or changed meaning.”); *In re ActiveVideo Network, Inc.*, 111 USPQ2d 1581 (TTAB 2014) (“[W]e agree with the Trademark Examining Attorney that the evidence of record clearly shows that ‘CLOUD TV,’ the compound created by the combination of the individually generic terms ‘cloud’ and ‘tv,’ is itself generic inasmuch as no new meaning beyond the individual meaning of the components is created by the combination”); *In re Lowrance Electronics*, 14 USPQ2d 1251, 1252 (TTAB 1989) (“In the case at hand the combination of the generic words ‘COMPUTER’ and ‘SONAR’ achieves no commercial impression different from what one who understands the individual meanings of the separate words would expect.”).

Applicant's specimen of use, described as "advertising for one of [his] award services in the field of trap music under the applied-for mark" is shown below:



Applicant's substitute specimen, 1¹⁵

¹⁵ January 9, 2020 Response TSDR 11.



Applicant's substitute specimen, 2¹⁶

We find that Applicant's use of the term TRAP MUSIC AWARDS supports our finding that the combination of generic terms "trap music" and "music awards" into the term TRAP MUSIC AWARDS when applied to Applicant's services will be understood by the relevant public to refer to entertainment services, namely, providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of trap music.

Applicant disagrees that the term TRAP MUSIC AWARDS as a whole is generic, but none of Applicant's arguments persuade us to adopt a different conclusion. Applicant contends that the refusal is inconsistent with prior examination decisions to register third party MUSIC AWARDS marks for music awards services.¹⁷ Of course, as is often stated, "the Board must decide each case on its own merits," and even if prior registrations had characteristics similar to this application, the "allowance of such prior registrations does not bind the Board." *In re Nett Designs*,

¹⁶ Id. TSDR 13.

¹⁷ 7 TTABVUE 7.

Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Here, we do not find similar characteristics. Applicant submits nine third party registrations, all of which issued either on the Supplemental Register or pursuant to a claim of acquired distinctiveness, and we find none of the marks comparable to Applicant's mark TRAP MUSIC AWARDS.¹⁸ Eight marks combine MUSIC AWARDS (MUSIC AWARDS disclaimed) and a prefatory geographic term (CHICAGO, LATIN AMERICAN, MEXICAN, AMERICAN, DETROIT, ARMENIAN, NEW YORK, and EUROPE).¹⁹ Because the registrations feature geographic terms which do not appear in Applicant's proposed mark, they are different in nature from Applicant's marks.²⁰ With respect to the remaining registration for VIDEO MUSIC AWARDS (AWARDS disclaimed), it is not clear what is described or named by the term "video music." In sum, the third party registrations cited by Applicant do not include the generic term for the music being awarded, as does Applicant's proposed mark TRAP MUSIC AWARDS.

Applicant also argues that a term is not generic if it conveys multiple meanings rather than being primarily understood to refer to a genus of goods or services.²¹ We

¹⁸ July 20, 2020 response TSDR 14-22.

¹⁹ We note that the evidence of MUSIC AWARDS being disclaimed in addition to the restriction to registration on the Supplemental Register or pursuant to acquired distinctiveness confirms our finding that MUSIC AWARDS is generic as applied to such entertainment services.

²⁰ A term that is primarily geographically descriptive of the goods/services under Trademark Act §2(e)(2), 15 USC 1052(e)(2), may be registered on the Supplemental Register, or, if it is shown to have acquired distinctiveness under §2(f), on the Principal Register. *See* TMEP § 1210.07 (a)-(b).

²¹ 7 TTABVue 5-6.

do not dispute the legal principle, but find it inapplicable here. *See In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420 (Fed. Cir. 2005) (“In this unusual case, the addition of the TLD indicator expanded the meaning of the mark [STEELBUILDING] to include goods and services beyond the mere sale of steel buildings. Specifically, the TLD expanded the mark to include internet services that include ‘building’ or designing steel structures on the web site and then calculating an appropriate price before ordering the unique structure.”); *In re Homes & Land Publishing Corp.*, 24 USPQ2d 1717, 1718 (TTAB 1992) (RENTAL GUIDE for real estate listing magazine for rental properties is not generic, in part, because “a ‘rental guide’ may be a book or manual instructing or directing one’s thinking about an amount to be paid for rent, a list of tenants and schedule of rents, property which may be available for renting, or the act of renting”). Applicant’s explanation of the multiple meanings of TRAP MUSIC AWARDS just restates the same meaning with different words:²²

It could refer to the development, creation, production, distribution, and post-production of a continuing music award program to recognize the achievements of entertainers in the field of music. It could also refer to providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence.

Plainly one “meaning” emphasizes the entertainment in how the trap music awards are awarded (development, creation, production, distribution, and post-production of a continuing music award program) and the other “meaning” emphasizes which individuals receive trap music awards (artists, producers, writers

²² 7 TTABVue 6.

and music video directors). However, with both “meanings,” we find that TRAP MUSIC AWARDS will be primarily understood to refer to the genus of services providing recognition and incentives by the way of awards to artists, producers, writers and music video directors to demonstrate excellence in the field of trap music.

Applicant asserts “the mark TRAP MUSIC AWARDS seems not to describe entertainment services, and instead tends to denote only that Applicant provides some nature of goods or services that are related to music.”²³ In support of this argument, Applicant offers “negative evidence” in the form of a Trademark Electronic Search System (TESS) page showing that Applicant’s search of the Office’s applications and registrations did not produce any other applications for TRAP MUSIC AWARD marks or services.²⁴ Applicant also makes the statement that the term TRAP MUSIC AWARDS “does not appear in Merriam-Webster’s Online Dictionary.”²⁵ *See In re Adlon Brand GmbH & Co.*, 120 USPQ2d 1717, 1719 (TTAB 2016) (defining “negative evidence” as evidence that a term is not found in reference works).

There is no requirement that the public’s understanding of a term must be derived from previously encounters with the term, and Applicant being the first user of a term does not preclude a finding that the term is generic. *See In re Nordic Naturals, Inc.*,

²³ 7 TTABVUE 4.

²⁴ July 20, 2020 Response TSDR 11.

²⁵ 7 TTABVUE 5. While Applicant did not submit evidence on this point, we take judicial notice that the term TRAP MUSIC AWARDS does not appear in the cited dictionary. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

111 USPQ2d at 1345 (“Thus, while Nordic may have been the first to use the phrase “children’s DHA” in this market, the question remains, in light of Nordic’s use and all other relevant uses, what does “children’s DHA” primarily mean to the relevant public? The evidence relied upon by the Board, and recited herein, constitutes sufficiently clear evidence that the relevant public uses ‘children’s DHA’ primarily to refer to the category of DHA products for children.”); *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1957 (TTAB 2018) (“The fact that there is no evidence of third-party use of the precise term ‘mechanically floor-malted’ is not, by itself, necessarily fatal to a finding of genericness.”); *Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1367 (TTAB 2013) (“However, the record shows that ‘Footlong’ has a well-understood and recognized meaning as a sandwich that is 12 inches long; the fact that dictionaries do not define ‘Footlong’ as a sandwich is not controlling on the question of registrability.”).²⁶

As set forth above, Applicant presents no evidence to counter, and does not dispute, our findings that the terms “trap music” and “music awards” are generic. With respect to the term as a whole, combining TRAP MUSIC and MUSIC AWARDS

²⁶ The predecessor to our primary reviewing court explained:

While it is always distressing to contemplate a situation in which money has been invested in a promotion in the mistaken belief that trademark rights of value are being created, merchants act at their peril in attempting, by advertising, to convert common descriptive names, which belong to the public, to their own exclusive use. Even though they succeed in the creation of de facto secondary meaning, due to lack of competition or other happenstance, the law respecting registration will not give it any effect.

Weiss Noodle Co. v. Golden Cracknel and Specialty Co., 290 F.2d 845, 129 USPQ 411, 414 (CCPA 1961) quoted in *Milwaukee Electric Tool Corp. v. Freud America, Inc.*, 2019 USPQ2d 460354, *21 (TTAB 2019).

into TRAP MUSIC AWARDS provides no additional or changed meaning, and the combination identifies the genus of music awards for trap music. Overall, the record supports a finding that the primary significance of the term TRAP MUSIC AWARDS in the minds of the consuming public is to identify a service rather than to identify a single source of the service. *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988) (“In view of the foregoing, we are convinced that ‘GROUP SALES BOX OFFICE’ is nothing more than a combination of the two common descriptive terms most applicable to applicant’s services which in combination achieve no different status but remain a common descriptive compound expression.”).

II. Decision

The refusal to register Applicant’s mark TRAP MUSIC AWARDS is affirmed.